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Mauger, Romain

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The voluminous energy transition legal framework in France and the question of its recognition as a branch of law

Romain Mauger

Groningen Centre of Energy Law (GCEL), Faculty of Law, University of Groningen, Oude Kijk in't Jatstraat 26, 9712 EK Groningen, the Netherlands

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ABSTRACT

From 2012 to 2017, the legal production related to the energy transition was massive in France. Although the Energy Transition for Green Growth Act of 2015 is the flagship legislation of this period on this eponymous topic, many other acts directly or indirectly concerning the energy transition were adopted and carried provisions contributing to its legal corpus. Additionally, this legal production was accompanied by an extensive process of public participation, an unusual practice in French energy law and policy building.

The emergence of a voluminous legal corpus concerning the organisation of a transition from fossil and fissile fuels to renewable energy sources in France has led the author to ask the following question: To what extent may the voluminous energy transition legal framework recently created in France result in the emergence of a new autonomous branch of law?

To answer this question, this article presents various sets of criteria for the recognition of an autonomous branch of law and uses the cases of the emergence of energy law and of the interrelations between environmental law and climate change law to analyse the potential qualification of the energy transition legal framework.

1. Introduction

'In 2015, in France and Germany at least it is exceptional to go a single day without seeing or hearing those words: "energy transition" …' (Guerry, 2016). On the western bank of the Rhine river, the term *transition énergétique* (energy transition) has become widely used since the election of François Hollande at the Presidency of the Republic in 2012. The term has been used to showcase public participation events, public policies, ministers' actions and energy-related acts.

Prior to this transition from fossil and fissile fuels towards renewable energy sources, France experienced a fast transition of its electricity sector in the 1970s and 1980s to reduce its dependency on oil products after the first oil-shock. This resulted in the completion of fifty nuclear energy reactors in merely fifteen years (Sovacool, 2017). According to Grubler (2010), this transition was made possible by the combination of a top-down organisation, the significant financial means of the publicly-owned energy company *EDF*, and a great regulatory stability. The role of an adapted and stable legal framework enforcing a clear and focused energy policy thus seems to be an important component for the implementation of a national-scale energy transition.

This article presents a description of the legal production process concerning the energy transition in France from 2012 to 2017 and its results, after which it analyses the latter through the lens of various sets of criteria for the recognition of the autonomy of a branch of law as established by French academic literature. Additionally, the cases of the emergence of energy law and the interrelations between environmental law and climate change law are used to assess the possible existence of an energy transition law as an autonomous discipline or as a sub-discipline in France. Finally, the conclusion presents the main results of the study and proposes complementary research.

2. A growing energy transition legal corpus supposedly based on a legislative co-building process

The energy transition legal framework creation was first marked by an attempt to root public participation and legislative co-building into its process, with mixed results. Besides that, five years (from 2012 to 2017) of legislative frenzy has translated into a plethora of provisions to organise the energy transition. The majority of these were grouped into two main acts dedicated to the transition, while the rest was grouped into several other acts focusing on other topics.

2.1. Public participation and legislative co-building

Historically, the French energy policy – marked by a dominant share of nuclear power in electricity production[1] - was designed by a

E-mail address: r.j.g.mauger@rug.nl.

[1] Varying between 71.6% and 77% during the period of 2012–2017 (RTE, 2018a).

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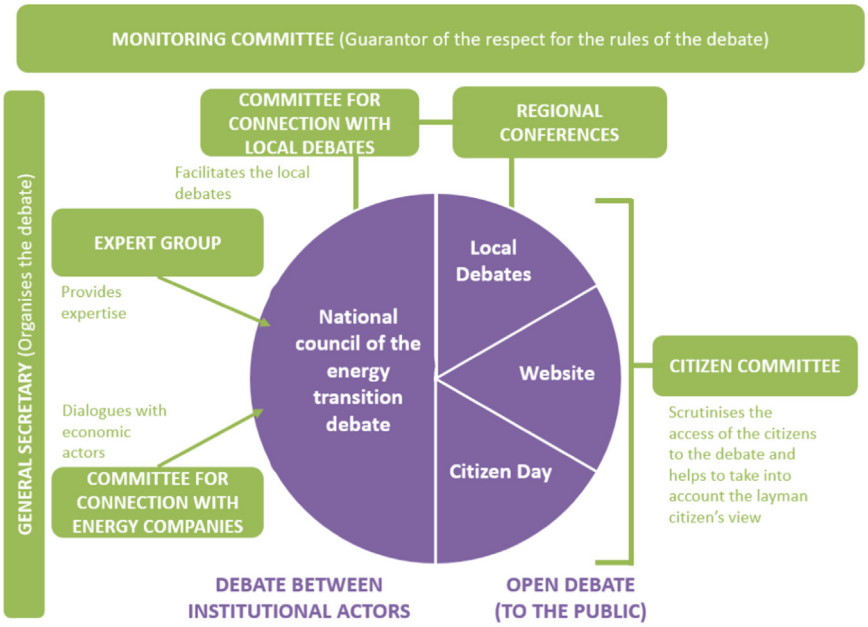

Fig. 1. Architecture of the bodies of the DNTE (Ministère de l'écologie, du développement durable et de l'énergie, 2013b).

'minuscule super-elite of engineers' (Schneider, 2013). However, between 2012 and 2015, different governmental initiatives attempted to switch from a top-down approach to a more bottom-up process by increasing civil society's participation in the design of the Energy Transition Towards Green Growth Act (hereafter Energy Transition Act) and more broadly by enhancing their knowledge of energy transition among the population. Two main tools were used to achieve this: environmental conferences and the National Debate on the Energy Transition (DNTE). Additionally, the Ministry promoting the draft of the Energy Transition Act called for its co-building with Opposition Members of Parliament.

2.1.1. Environmental conferences and the National Debate on the Energy Transition

Environmental conferences took place in 2012, 2013, 2014 and 2016, gathering six parties (employers' and workers' unions, environmental non-governmental organisations (NGOs), local representatives' associations, state authorities and parliamentarians) for an annual two-day conference where President Hollande and various ministers explained and submitted drafts of environmental policies for debate (Ministère de la Transition écologique et solidaire, 2016). One of the main topics discussed in those meetings was energy, especially measures fostering the transition towards renewable energy sources and energy efficiency. Among the declarations made at the first conference in September 2012, the Government committed to organise the DNTE and provided some elements regarding its rationale, method and institutions (Ministère de l'écologie, du développement durable et de l'énergie, 2012).

The DNTE is a public participation process that took place from November 2012 to July 2013 and which was aimed at nourishing a draft law on energy transition. Its *ad hoc* institutions were composed of committees and councils involving experts, energy companies, NGOs, citizens and members of the Government (see Fig. 1). The roll-out of its events (encompassing public meetings and open days at energy facilities) and the governing principles of the debate and of its bodies were detailed in a ministerial circular comprising a charter of the DNTE (Ministère de l'écologie, du développement durable et de l'énergie, 2013a). As a result of this process and due to conflictual positions between the different groups of representatives constituting the National council of the energy transition debate, illustrated by a temporary blockade of the process by employers' unions (Le Billon, 2013), a list of fifteen issues was adopted instead of recommendations, a less compelling notion (Conseil national du débat, 2013). While the main objectives and measures of this list were incorporated into the draft of the Energy Transition Act, some were not. One of the best examples of this can be found in issue 10, which concerns a resilient, diversified, balanced, competitive, and renewable-energies-oriented energy mix. One of its bullet points requested from the lawmaker to integrate into the act the capacity for the state authorities to decide to decommission a nuclear electricity production facility for energy policy reasons. In 2018, this has still not happened (Mauger, 2018).

2.1.2. A proclaimed legislative co-building of the Energy Transition Act

The draft of the Energy Transition Act was debated in Parliament from September 2014 to July 2015 (Légifrance, 2015). In the explanatory document motivating the choices made in the first draft of law submitted to the *Assemblée nationale*, the importance of a 'co-building' process is highlighted in contrast with a 'top-down idea of public policy making', although the document acknowledges it 'does not erase all the differences of opinions [but claims that it] respects all the actors' (Légifrance, 2014). However, the implementation of this legislative 'co-building' based on the respect for the Opposition's voice failed as soon as the Government decided to use the tools of the *parlementarisme rationalisé*.[2] For the Energy Transition Act, it took the shape of the *procédure accélérée*[3] and the *temps législatif programmé*,[4] two ways to strictly limit the debates over proposed articles and amendments. Additionally, the adopted act contains 48 authorisations to the Government for adopting *ordonnances*,[5] a procedure in which the Government writes the law and only requires a pre-authorisation and a final validation by Parliament. As a whole, the promised co-building fell short of expectations created by the above-mentioned explanatory document for the draft of law.

[2] All the tools that the Government can use directly or through its majority group at the *Assemblée nationale* and/or *Sénat*) to limit the legislative or control powers of the Parliament.

[3] French Constitution, 4 October 1958, art. 45.

[4] *Règlement de l'Assemblée nationale*, February 2018, art. 49.

[5] French Constitution, 4 October 1958, art. 38. For more details on *ordonnances*, see Steiner (2010).

2.2. Two main acts directly referring to the energy transition

The two main acts containing energy-transition-related provisions were adopted in 2013 (the Brottes Act) and in 2015 (the Energy Transition Act).

2.2.1. The 'Brottes Act': emergency measures for the energy transition

On 15 April 2013, the act 2013–312 Concerning the Preparation of the Transition Towards an Economical Energy System also Involving a Range of Provisions for Water Pricing and Wind Power, labelled the 'Brottes Act',[6] was adopted. This act contains one-off provisions to address specific energy and water issues, but it does not provide an energy transition framework. It was hastily adopted after the start of President Hollande's term, which was the occasion to adopt emergency measures to bring relief to the wind industry, facing many odds following the legislative changes made during the previous term.[7] Additionally, provisions concerning load management were adopted to incentive demand response in the electricity market.[8]

2.2.2. The Energy Transition Act: a flagship act to organise an energy transition legal framework

The Energy Transition Towards Green Growth Act 2015–992 was adopted on 17 August 2015. It is subdivided into eight headings: energy transition objectives, building renovations for energy efficiency, clean transportation, circular economy, renewable energy development, nuclear safety and citizens information, simplification of procedures, and governance and planning tools. Out of the 215 provisions of the act, the first two composing subheading 1 are the most interesting for the present study.

The first article of the act emphasises the new direction of French energy policy towards 'the environmental and climate impact of its energy mix' (Andriosopoulos and Silvestre, 2017). Indeed, in article 1, indent I of the Energy Transition Act, green growth[9] is placed before energy security, competitive energy prices, environmental protection and guaranteed access to energy. Besides, France's energy policy is engaged in the implementation of a European Union (EU) Energy Union, aiming at 'building a carbon-free and competitive economy through development of renewable energy sources, physical interconnections, [and] support for energy efficiency …'. Regarding the specific targets of the national energy policy set in article 1, indent III of the Energy Transition Act, France pledges to reduce its greenhouse gas emissions by three-quarters in 2050 compared to 1990,[10] to reduce its energy consumption (and specifically its primary energy consumption of fossil fuels by 30% by 2030 compared to 2012), to diversify its electricity production mix, and to increase the share of renewable energy in power, heat and transportation, as illustrated in Fig. 2. With this, the energy transition in France endeavours not only to reduce the use of fossil fuels, but also of fissile material.

Additionally, the second article of the Energy Transition Act states that public policies must support green growth *via* different ways, for example by promoting electricity self-consumption or by avoiding carbon leakage.

In the remaining articles of the Energy Transition Act, different types of provisions can be found. Many of them concern very specific tools, such as a simplified regime for the connection to the grid of marine renewable energy production sites in article 135 or a financial incentive for the development of electricity storage in article 157. Some other articles concern planning tools, such as the Multiannual energy plan, outlined in article 176. Finally, some create new institutions supposed to provide inputs to energy-transition-related drafts of policies or acts, such as the Committee of experts for the energy transition, established by article 177.

2.3. Plethora of provisions in a variety of acts

The energy transition project is so broad and entails so many impacts on the current society that inevitably many of the components of its evolving legal framework are to be found in acts other than the Brottes and Energy Transition ones.

2.3.1. Ordonnances

Although being labelled as the 'less democratic law-making procedure' (Trébulle, 2015), *ordonnances* have been widely used for the construction of the energy transition legal framework in France. As a first example, it was used twice in three years to experiment and later modify and generalise a single permit-granting system gathering together the various authorisations formerly needed with an administrative 'one-stop-shop' for facilities falling under the regime of the classified installations for environmental protection (ICPE), including wind farms and biogas-producing plants.[11] As a second example, as mentioned above, 48 authorisations to adopt *ordonnances* were granted to the Government in the Energy Transition Act. They span a broad range of issues, such as the revision of feed-in-tariff schemes, the revamping of tendering procedures, the change of rules for the connection of assets producing electricity from renewable sources to the distribution grid, the framing of electricity self-consumption, or the early deployment of smart grids or optimised energy storage and conversion assets.[12] However, as noted by Ezan and Lépée (2016), this significant use of *ordonnances* has led to a 'double trigger' energy transition with a first legal framework directly integrated in the Energy Transition Act and a second to be found in the many *ordonnances* that have to be written and adopted by the Government before they are to be validated by Parliament.

2.3.2. Territorial legislation

During President Hollande's term, substantial changes have affected the jurisdiction of local authorities as far as the energy transition is concerned, as Dreyfus and Allemand (2018) explain. The most explicit change entailed providing the administrative category of metropolis (a group of contiguous municipalities consisting of more than 400.000 inhabitants) with the capacity to act on the 'Contribution to the energy transition'.[13] Moreover, many other articles in the same act or in the 2015–991 Act Concerning the New Territorial Organisation of the Republic of 7 August 2015 are directly or indirectly concerned with energy and the role of local authorities in this field.

[6] From the last name of its promoter: Francois Brottes, member of the *Assemblée nationale*.

[7] See the fall in annual wind power capacity connection to the grid between 2010 and 2013 (RTE, 2018b).

[8] On article 14 of the act.

[9] Defined in the first indentation as 'an economic development pattern respectful of the environment, at the same time energy-, resources- and carbon-efficient, socially inclusive, supporting the innovation potential and guardian of business competitiveness'.

[10] This target was already set in art. 2 of the Programme Act 2009–967 of 3 August 2009 Concerning the Implementation of the Grenelle Environment, which transposed the objectives of the reduction of greenhouse gases and the increase in renewable energy sources in energy consumption from paragraph 32 of the European Council's decision of March 2007 (7224/1/07 REV 1) and from article 3 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the Use of Energy from Renewable Sources.

[11] *Ordonnance* 2014–355 of 20 March 2014 Concerning the Testing of a Single Permit for Classified Installations for Environmental Protection, and *Ordonnance* 2017–80 of 26 January 2017 Concerning the Environmental Permit.

[12] In art. 119, I, 1°; 119, I, 10°; 119, I, 2°; 119, I, 3°; and 200 of the Energy Transition Act respectively.

[13] Act 2014–58 Concerning the Modernisation of Territorial Public Action of 27 January 2014, art. 43.

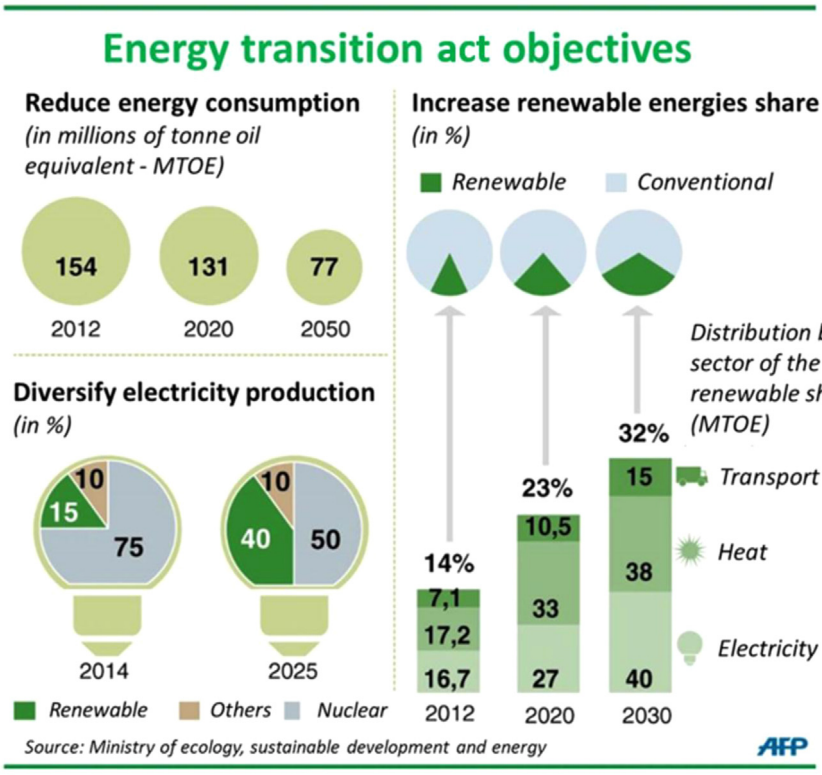

Fig. 2. Energy Transition Act objectives (Ministère de l'écologie, du développement durable et de l'énergie, 2014).

2.3.3. Tax legislation

Every year in France, a Finance Act is adopted at the end of the year to settle the budget for the following year. Additionally, there are regularly one or more Amending Finance Acts over the concerned year to reconcile the budget forecast with the reality of the economic situation and in case of unexpected spending. From 2012 to 2017, most of these acts included provisions directly impacting the energy transition towards an increased development of renewable energy, as some examples in the following paragraph will demonstrate.

Article 60 of the 2012–1510 Amending Finance Act for 2012 of 29 December 2012 includes some specifications about the costs and financial return on fixed capital concerning electricity storage in zones isolated from the metropolitan grid. The 2013–1278 Finance Act for 2014 of 29 December 2013 stipulates the implementation of a carbon tax in its article 32, called *contribution climat-énergie*, by increasing the taxes of different energy products proportionally to their carbon content. The 2014–1654 Finance Act for 2015 of 29 December 2014 provides a partial tax exemption in its article 60 on biogas production plants. Finally, the acts adopted in 2015 and 2016 also continue to reorganise and adjust the tax system to the energy transition, especially as the Energy Transition Act was adopted.

2.3.4. Simplification of legislation

The main example here was provided by the 2014–1 Act Enabling the Government to Simplify and Secure the Life of Businesses of 2 January 2014, reshuffling the permit-granting system by *ordonnances*, as mentioned above. The same year, the 2014–1545 Act of 20 December 2014 for the Simplification of Existing Regulations for the Business Sector and Clarification of Law and Administrative Procedures was adopted. In its article 21, the act settles a temporary mechanism for cogeneration units during the implementation of a capacity market in France. This provision actually has little to do with simplification of the law but was included after a decision of the *Conseil constitutionnel* cancelling a previous system in an Act of 2013.

While the analysis in this article is limited to the legislative level, it must be mentioned that there are plenty of decrees, administrative orders, guidelines, planning tools and energy-related local or national schemes of variable legal bindingness that concur with the implementation of a complete energy transition legal framework.[14]

3. The criteria for the autonomy of a branch of law

As the following developments highlight, there is a long-lasting academic discussion in France regarding criteria for the recognition of the autonomy, or even the independence, of a branch of law. Yet, this discussion exists as well in Anglophone academic literature, as the cases of energy law, environmental law or climate change law demonstrate.

3.1. Criteria in the French literature

In French legal literature, the current period is often labelled as one of 'post-modern law' (Chevallier, 2008), characterised by its ever-increasing complexity and diversity. One of the features of this diversity is the growing number of fields of law looking for recognition, arguably to adequately conduct research on and teach their particularities, but also sometimes simply to create 'an attractive label' (Daintith, 2017). The task, therefore, is to find criteria to assess the merits of a field of law claiming its independence or autonomy.

First, it is possible to choose a hard, clear, and simple criterion. Waline (1963) proposes to acknowledge the existence of a branch of law only if it has a specialised jurisdiction. Second, it can be a soft, wide-open criterion. Bekaert (1963) proposes such a criterion where a branch of law can be recognised as soon as it enjoys 'a normative system adapted to its aims'. Third, it can be a middle-ground criterion (or

[14] For the Energy Transition Act alone, 162 application decrees are needed. The list can be consulted here: [https://www.legifrance.gouv.fr/affichLoiPubliee.do;jsessionid=355A1277A1707A21BCF65A81DA551084.tpdila08v_1?idDocument=JORFDOLE000029310724&type=echeancier&typeLoi=&legislature=14].

group of criteria), allowing a more reasoned debate. According to Vedel (1981), two criteria can be applied to identify the autonomy of a branch of law: 'each time that applying general principles and methods of reasoning proper to an existing branch to another potential one leads to inaccuracies', and 'when the considered matter, although apparently only making use of principles and methods from existing branches, transforms them into a kind of chemical combination bringing novelty'. In addition to these novelty-based criteria, Carbonnier (2004) claims that the new branch must display 'fundamentally different legal phenomena … showing renewed methodology'.

Aside from these criteria, Chazal (2003) proposes a set of five pointers, none of which are self-standing: subjective, formal, substantive, purpose, and matter criteria. The subjective criterion is aimed at defining the field of a branch of law by the subjects to whom it applies. The example provided by the author is that commercial law would apply to businesses. The formal criterion is fulfilled when a (candidate) branch of law is organised by one flagship act or when it is codified (in civil law systems). The substantive criterion is based on the specificity of the rules composing a field of law. The purpose criterion focuses on the final aim of each branch of law. For example, environmental law is aimed at protecting nature. Lastly, the matter criterion defines a branch of law by its object, the matter it rules over. For instance, contract law applies to contracts. As each criterion is not sufficient in itself, it is important to find a body of evidence. The higher the number of criteria fulfilled by the aspiring branch of law, the stronger its chances to be recognised as such.

However, the same author (Chazal, 2003) also proposes to simply drop the concept of branches of law, which conveys an image of independent branches that are only connected to the trunk (of which the content remains to be determined) and not to each other. A more adapted metaphor can then be found under the ground: the rhizomes. Inspired by Deleuze and Guattari (1976), this representation allows one to imagine a strongly interconnected network with every area of law nourished by its neighbouring branches. This image would probably lower the importance of finding criteria for the recognition of an area of law, as all areas would more or less be mixed with the others.

3.2. The case of energy law

In France, more than seventy years passed between the first time an energy code was planned[15] and its actual release in 2011[16] (Sablière, 2008). While academic literature is mostly positive about this new code (Sablière, 2011; Boiteau, 2011; Krolik, 2011), it also criticises the fact that 'more than 300 articles … directly concerning energy [are still] kept by more than 20 other codes' (Sablière, 2011). As a case in point, victim of a 'first come, first served' logic, the energy code does not contain the provisions concerning nuclear energy, nor the ones about wind energy, as they are maintained in the environment code where they had been integrated previously.

Although the creation of the energy code is considered the birth certificate of energy law in literature (Krolik, 2011), the debate around the very existence of this area or branch of law is still vivid. As an example, the journal *Revue Francaise de Droit Administratif* (RFDA) dedicated a special issue to energy law in 2017, containing an article entitled 'Does an Energy law exist?' (Terneyre and Boiteau, 2017). According to Terneyre and Boiteau (2017), while there is clearly no such thing as 'an autonomous energy law, disconnected from the general hierarchy of norms, with specific tools and a specific judge', there certainly is 'an increasingly complete body of rules concerning energy, now codified, stirred by common EU-wide and national objectives, applied by an independent regulator, and questioned by an increasing number of academic publications'. In these elements, multiple of Chazal's five aforementioned criteria can be found, and the authors conclude that the existence of energy law is 'possible'.

In comparison, the debate concerning the existence of energy law as an academic discipline in the Anglophone academic literature dates back to the seminal work of Bradbrook (1996). Nowadays it seems to be taken for granted that energy law exists in many countries and particularly in and at the level of the EU (Roggenkamp et al., 2016). However, in the past years it was possible to find another book on EU energy law asking 'Is there such a thing as 'EU Energy Law'?' (Talus, 2013), a chapter on international energy law as an 'emerging academic discipline' (Wawryk, 2014), and various journal articles exploring the content, specificities and limits of energy law (Heffron and Talus, 2016a, b). Finally, in 2018, a new piece has proposed a set of principles to provide energy law with more substance (Heffron et al., 2018).

According to Bradbrook (1996), energy law can be defined as 'the allocation of rights and duties concerning the exploitation of all energy resources between individuals, between individuals and the government, between governments and between states'. Additionally, the author justifies the consideration of energy law 'as a separate legal discipline' with a set of eight 'social considerations' and seven 'jurisprudential considerations' highlighting the specificity of the field (multidisciplinary approach with other areas of law as well as with various sectors of society and with a link to technology, social and security importance, et cetera). This method of criteria identification for the recognition of a branch of law does not differ much from Chazal's body of evidences presented in the previous subsection.

3.3. The case of environmental law and climate change law

The aim of this subsection is not to assess the recognition of environmental law as a branch of law but rather to provide insight into the link between environmental law and climate change law, or stated differently, on the demarcation between a 'parent' field of law[17] and a 'child' field of law. In one of the leading publications on climate change law so far, Bodansky et al. (2017) dedicate a reflection to the question of this demarcation:

> In referring to 'international climate change law', we do not mean to suggest that it is a discrete body of law with its own sources, methods of law-making, and principles, or that it is a self-contained regime. Quite the opposite, international climate change law sits squarely within the fields of international environmental law and public international law more broadly.

To be perfectly clear, the authors add that 'this book attempts to avoid 'issue fragmentation', since 'international climate change law, as it is emerging, functions as a laboratory for the development of international law more generally'. In this perception, the body of rules concerning climate change and the fight against it is directly regarded as a subdiscipline, not looking for any emancipation but rather trying to influence its parent branch of law. This case opens the possibility for another qualification between an autonomous branch of law recognised as such and a group of rules with no specific link between themselves, nor with any particular instruments, adding another shade to the colour palette of the legal order. However, as the deeply intricate network of fields of law evolves, some sectors gaining traction while others are losing interest, or if a 'parent' field and a 'child' field of law are taking different roads, the question of the autonomy of a subdiscipline could come back in the future.

[15] By the *Décret-loi* of 17 June 1938 Concerning Measures to Ensure the Development of the Electric Equipment in France, art. 55.

[16] By the *Ordonnance* 2011–504 of 9 May 2011 Codifying the Legal Part of the Energy Code.

[17] Although according to Dernbach and Kakade (2008), environmental law is only one of the 'parent' fields of law, together with 'energy law, business law, and international law'.

4. Is energy transition law an autonomous branch of law?

The following paragraphs use the earlier-described criteria to assess the degree of autonomy of a branch of law and apply them to qualify the energy transition legal framework in France.

4.1. Application of the criteria

Firstly, the autonomy of a so-called energy transition law can be assessed through the lens of the hard, soft and middle-ground criteria developed by Waline (1963), Bekaert (1963), Vedel (1981) and Carbonnier (2004). The hard criterion, requesting a special court, is simple to assess, and there is no such court for the energy transition. The soft one, based on a 'normative system adapted to its aims', requires more analysis. It can be argued that this 'normative system' adapted to the aims of the energy transition is increasingly taking shape in France, as Sections 2.2 and 2.3 of this paper have illustrated. The middle-ground criteria (based on novelty and specificity) also seem to be partially but increasingly fulfilled. Indeed, in France, as in many other countries, the implementation of support mechanisms, mainly feed-in-tariffs, was necessary to launch the market for electricity from renewable energy sources (IRENA and REN21, 2018). More recently, this support mechanism has evolved towards a closer-to-the-market one, based on competitive bidding and feed-in premium.[18] However, demand is also progressively incentivised to follow supply, resulting in a different configuration of the electricity system compared to the last decades in France. On the other side, a new legal framework is being created to organise the early phase-out of plants generating electricity from fossil and fissile fuels, as the former body of rules did not mention this possibility apart in case of safety threats (Mauger, 2018). The legal framework concerning the energy transition therefore seems to create new and specific tools for its roll-out.

Secondly, Chazal's (2003) five criteria (subjective, formal, substantive, purpose, and matter) can be used to analyse the characteristics of a potential energy transition law in France. To start with the subjective criterion, focusing on the subjects the branch of law applies to, this might be difficult to identify, as the energy transition concerns all the actors involved in energy production, transportation or use, which amounts to virtually every human on earth. However, it would be possible to qualify the subjects of an energy transition law as being every actor of this transition, this being the driver of an electric car looking for an accessible recharging point, the global company producing electricity from renewable sources, or the municipality dealing with local heating networks and the switch to renewable energy sources. The formal criterion, based on codification or a flagship act, seems to be validated with the existence of an extensive body of rules contained in the Energy Transition Act and in various other legal texts. The substantive criterion, which is interested in the specificity of the rules, has already been discussed in the preceding paragraph, in the section concerning the novelty and specificity criteria. For the purpose criterion, geared towards the final aim or purpose of the field of law, it would be possible to clearly establish one of multiple aims for the energy transition legal framework. Its purpose could be rooted in a set of principles developed by academic literature, just as Heffron et al. (2018) did with energy law. More research on potential principles for an energy transition law is necessary, although a mix of existing principles amended to fit the issue could contain the fight against climate change, energy justice and just transition, public participation or access to modern energy services.[19] The problem is that these purposes are already integrated in other branches of law, which can create confusion. Finally, the matter criterion looks at the object of a branch of law, which here would be the energy transition and its process of implementation. The issue here is that this object is very wide, as are the subjects.

As a whole, the application of the aforementioned criteria for the autonomy of a branch of law seems to be only partially met in the case of the energy transition legal framework developed in France, as many criteria can still be contested for their lack of accuracy or of uniqueness.

4.2. Qualification

Considering all the analysed elements, the question is how France's legal framework for energy transition could be qualified.

The qualification as an autonomous branch of law seems illusory for multiple reasons. First, as seen in Section 3.2, the very recognition of an autonomous energy law in France is not self-evident. Only some gathered elements allowed Terneyre and Boiteau (2017) to mention its 'possible existence'. The simple fact that the energy transition legal framework is not codified and less established than energy law would therefore weaken the claim of an autonomous energy transition law. Additionally, and perhaps more importantly, if a fully embodied energy transition law would exist, then it would suck up a significant part of energy law and environmental law, to name but a few. This perspective might not be desirable, as it would contribute to the 'issue fragmentation' mentioned before (Bodansky et al., 2017).

Possibly it could be regarded as a subdiscipline, as is the case with climate change law falling under the umbrella of environmental law and energy law. As highlighted in this article, this subdiscipline could count on a specific law-making method based on public participation and with the aim of consensus reaching, as well as on an already voluminous legal framework that is still growing. To add to this, the academic interest for this body of rules has recently been gaining traction in France, as two academic books were published that openly focus on the legal framework of the energy transition in France (Bain-Thouverez et al., 2016) and in the EU (Le Baut-Ferrarese, 2015). Doctoral theses in law directly developing research on the energy transition legal framework are flourishing as well (Darson, 2015; Corduas, 2016; Mauger, 2017; Zoumenou, 2018). If this trend persists and the number of academic works concerning the energy transition legal framework in France continues to increase, then the body of evidences converging towards a strongly rooted energy transition law as a subdiscipline attached to some 'parents' fields of law, environmental and energy law being chiefly concerned here, would make its recognition highly probable.

5. Conclusion

This article has attempted to answer the following question: To what extent may the voluminous energy transition legal framework recently created in France result in the emergence of a new autonomous branch of law?

To provide some elements of response, the article first presented the characteristics of the above-mentioned legal production: enhanced public participation, proclaimed shared law-making ('co-building'), adoption of a flagship act, and a wealth of provisions in a variety of different kinds of legislations. Then, the article explored various traditional sets of criteria for the recognition of the autonomy of a branch of law in French academic literature. The case of energy law is very useful in this regard, with a vivid discussion over its existence, its characteristics and whether it should be regarded as a separate body of law in both French and Anglophone literature.

When these criteria are applied to the case of the legal framework for the energy transition in France, it turns out that its qualification as an autonomous branch of law seems illusory, but that its qualification as a subdiscipline, mainly under energy and environmental law, could

[18] Ibid., art. 104; and *Ordonnance* 2016–1059 of 3 August 2016 Concerning Electricity Generation from Renewable Energy Sources, art. 8–11.

[19] These principles are mostly mentioned in Heffron et al. (2018), concerning environmental law, climate change law or energy law, but the principle of just transition is explained by Heffron and McCauley (2018).

be the way forward. If such a recognition is extended, it could open new fields of research, for instance on possible energy transition law principles reinforcing its foundations and providing it with a clear and unique purpose.

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